



September 25, 2017

Via FOIA Online

U.S. Environmental Protection Agency
Headquarters

Re: Freedom of Information Act request for records related to enforcement of environmental laws and regulations in Texas between August 24, 2017 and present

Dear FOIA Officer:

On behalf of Waterkeeper Alliance, Inc. (“Waterkeeper Alliance”), I write to request the disclosure of records pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and pertinent Environmental Protection Agency (EPA) regulations, 40 C.F.R. § 2.100, *et seq.* See 33 U.S.C. § 1318(b) (“records, reports, or information obtained under this section ... shall be available to the public,” other than trade secret information, which may be kept confidential).

Description of Records Sought

Waterkeeper Alliance seeks to determine whether EPA has initiated, or assisted the state of Texas to initiate, **any actions to enforce federal environmental laws and regulations in Texas** (including but not limited to: notices of violation, judicial or administrative complaints, compliance orders, consent orders, etc.) **between August 24, 2017 and present**. Please provide Waterkeeper Alliance with all records¹ in EPA’s possession that relate to such enforcement actions. EPA may satisfy this request by providing a list of such enforcement actions, including the name of each party alleged to have caused a violation, a description of each violation and enforcement action, and the status of each enforcement action and any remedial measures undertaken to address the underlying violation(s). Please include any enforcement actions initiated by the state of Texas in which EPA has been involved.

¹ The term “records” means anything denoted by the use of that word in the FOIA, including but not limited to all correspondence, memoranda, notes, e-mails, notices, facsimiles, charts, tables, minutes of meetings, presentations, orders, and filings.

If your office determines some portions of the requested material are exempt from disclosure, Waterkeeper Alliance requests, in accordance with FOIA, the remaining non-exempt portions. Waterkeeper Alliance reserves the right to appeal any decision to withhold any such information. If you do not grant this request within twenty business days, Waterkeeper Alliance will deem this request denied.

Request for a Fee Waiver

Waterkeeper Alliance requests that EPA waive the fee that it would otherwise charge for search and production of the records described above. FOIA requires that records be provided without charge or at a reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). The requested disclosure meets these requirements.

A. Disclosure Would Contribute Significantly to Public Understanding of the Operations of Government

The disclosure requested here would contribute significantly to public understanding of the operations or activities of government, satisfying the four elements identified in EPA’s regulations. *See* 40 C.F.R. § 2.107(l)(2).

- i.** The requested records concern the operations or activities of government, *see* 40 C.F.R. § 2.107(l)(2)(i), because much of the information requested directly relates to the government’s actual or potential regulatory or enforcement activities under the federal Resource Conservation and Recovery Act (RCRA).
- ii.** Second, the information requested has high informative value and the disclosure is likely to contribute meaningfully to an understanding of government operations, *see id.* § 2.107(l)(2)(ii), because much of the requested information is not currently in the public domain and would disclose information concerning the government’s actual or potential regulatory and enforcement activities under RCRA relating to CCR surface impoundments.
- iii.** Disclosure will likely contribute to the understanding of a broad public audience interested in government enforcement of environmental laws, because Waterkeeper Alliance has expertise in that subject area and the ability and intention to disseminate to the public any newsworthy information it finds in the requested records.

Waterkeeper Alliance has 178 local Waterkeeper chapters throughout the United States (e.g., Riverkeeper, Baykeeper, Coastkeeper, etc.

organizations). Communities nationwide look to Waterkeeper Alliances for critical information concerning, among other things, sources of pollution in their local waterways. The information requested is vital to helping the public understand the risks posed to local waterways and communities, and what actions the government is taking to protect human health and the environment. Without this information, the public cannot fully understand the extent of EPA's enforcement activities.

Waterkeeper Alliance has a proven ability to disseminate information quickly and effectively through various communication channels including publications, public interest litigation, educational programs, media initiatives, and its website. Waterkeeper Alliance's website www.waterkeeper.org is updated regularly and draw thousands of visits per month. Waterkeeper Alliance also publishes WATERKEEPER, a magazine on water-related environmental and public health subjects of current interest, which has an annual circulation of 130,000. Currents is Waterkeeper Alliance's electronic newsletter on water-related issues that is distributed by email to approximately 24,000 subscribers monthly and made available to the general public online. Waterkeeper Alliance also issues press releases and participates in press conferences and interviews with reporters.

Waterkeeper Alliance routinely uses FOIA to obtain information from federal agencies that Waterkeeper Alliance's legal and scientific experts analyze in order to inform the public about a variety of issues, including clean water, drinking water safety, and energy policy. Waterkeeper Alliance has demonstrated its ability to analyze and distribute information to a broad audience of interested people.

- iv. Fourth, the disclosure is likely to contribute "significantly" to public understanding of government operations, *see* 40 C.F.R. § 2.107(l)(2)(iv), because Waterkeeper Alliance will disseminate any newsworthy information in the released records to its membership and the public through one or more of the communications channels referenced above.

B. Second Requirement: Waterkeeper Alliance Has No Commercial Interest in the Disclosure

Disclosure in this case would also satisfy the second prerequisite of a fee waiver request because **Waterkeeper Alliance does not have any commercial interest that would be furthered by the requested disclosure.** 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). Waterkeeper Alliance is a not-for-profit organization with no commercial interests. *See* 40 C.F.R. § 2.107(l)(3)(i).

Congress amended FOIA to ensure that it be liberally construed in favor of fee waivers for noncommercial requesters. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003). The fee waiver amendment was meant “to remove the roadblocks and technicalities which have been used by various Federal agencies to deny waivers or reductions of fees under the FOIA to the news media and public interest users of the FOIA.” 132 Cong. Rec. S16,496 (Oct. 15, 1986) (Sen. Leahy). Courts have repeatedly cited this statement as evidence of the legislative intent behind the FOIA fee waiver provision. *See Judicial Watch*, 326 F.3d at 1315; *Cnty. Legal Servs. v. U.S. Dep’t of Housing & Urban Dev.*, 405 F. Supp. 2d 553, 555 (E.D. Pa. 2005); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855-56 (D. Colo. 1994).

Waterkeeper Alliance has no commercial interest in obtaining these documents and requests them in order to serve the public interest. It will disclose to the public any newsworthy information about the government’s regulatory and enforcement activities under federal environmental laws.

Willingness to Pay Fees Under Protest

Please provide the requested records irrespective of the status and outcome of your evaluation of the fee waiver request. In order to prevent delay in EPA’s provision of the requested records, Waterkeeper Alliance will, if necessary and under protest, pay fees in accordance with 40 C.F.R. § 2.107(c)(1)(iv), (c)(2), and (d). Please consult with me, however, before undertaking any action that would cause the fee to exceed one hundred dollars. Such payment will not constitute any waiver of Waterkeeper Alliance’s right to seek administrative and judicial review of any denial of the fee waiver request.

Delivery of Records

In responding to this request, please comply with all relevant deadlines and other obligations set forth in FOIA and EPA’s regulations. *See*, e.g., 5 U.S.C. § 552(a)(6)(A); 40 C.F.R. § 2.104(a)-(d), (f). Please produce the requested records to me by emailing them to me at pharrison@waterkeeper.org, or by mailing them to me at:

180 Maiden Lane
Suite 603
New York, NY 10038

Please produce the requested records as they become available. EPA’s search for, or deliberations concerning, certain records should not delay the production of other records that EPA elects to produce.

In the event EPA concludes that some of the requested records are already publicly available, I will be happy to discuss those conclusions in an effort to narrow the scope of this request. Please do not hesitate to call or email me with any questions.

Thank you for your prompt attention to and assistance with this matter.

Sincerely,



Peter A. Harrison

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